IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

WP(C).No. 33323 of 2006(P)

PETITIONER:

C.K.SUGUNAN, CHETHIYATTIL HOUSE,
PULLUTTU, KODUNGALLOOR, THRISSUR DISTRICT.

BY ADV. SRI.M.P.ASHOK KUMAR

RESPONDENTS:

1. THE STATE OF KERALA,
   REP. BY THE CHIEF SECRETARY,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. THE TAHSILDAR,
   KODUNGALLOOR, THRISSUR DISTRICT.

3. TODDY WORKERS WELFARE FUND INSPECTOR,
   THRISSUR.

R3 BY SHRI.K.HARILAL
G.P. SHRI.T.T.MAHMOOD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No. 33323/06.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE JUDGEMENT IN O.P.NO.17359/93 OF THIS COURT.

P2. COPY OF THE ORDER DTD.18.2.98 BY THE INSPECTOR.

P3. COPY OF THE APPEAL DTD.19.4.98 BEFORE THE GOVT.

P4. COPY OF THE AWARD OF THE LAK ADALATH, DTD.22.1.00.

P5. COPY OF THE NOTICE DTD.23.11.2001.

P6. COPY OF THE JUDGEMENT IN O.P.NO.37829/01 DTD.22.3.06.

P7. COPY OF THE ORDER DTD.6.10.2006.

P8. COPY OF THE AUCTION NOTICE DTD.20.11.06.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.33323 of 2006

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Dated this the 8th day of October, 2007

J U D G M E N T

The petitioner is a licensee of a toddy shop. As an employer of the employees, the petitioner was liable to pay contributions under the Kerala Toddy Workers' Welfare Fund Act. The petitioner did not originally pay contributions. The question of his liability to pay contributions was decided finally against him. Under the Act, the petitioner is liable to pay interest for delayed payment of the contributions. Therefore, the third respondent demanded interest also on the delayed payment. The issue involved in this writ petition is as to whether the petitioner should pay interest at the rate of 9 per cent or 18 per cent. This issue arises because of the fact that subsequent to the period for which the contributions were assessed Section 9 of the Act which stipulates the rate of interest was amended raising the interest rate from 9 per cent to 18 per cent. Originally, the petitioner filed this writ petition with

a contention that such change of rate of interest was by an executive order and since the provisions of the Act cannot be amended by an executive order the petitioner is not liable to pay enhanced interest. When it was brought to his attention that Section 9 of the Act itself was amended by the Legislature by the Kerala Toddy Workers' Welfare Fund (Amendment) Act, 1996 (Act 3 of 1996), raising the interest to 18%, the petitioner sought amendment of the writ petition challenging the retrospective operation of the amending Act. Now the petitioner confines his contention to that aspect alone to the effect that the Act was published in 1996 and therefore, the petitioner is not liable to pay interest at the rate of 18 per cent, but only 9 per cent as prescribed at the relevant time when the contributions became due.

2. The learned Standing Counsel appearing for the third respondent submits that the demand for interest was only at the rate of 9 per cent till the date of coming into force of the Amendment Act and it is for the subsequent period that 18 per cent interest has been demanded.

3. I have considered the rival contentions in detail.

4. I am satisfied that the question of retrospectivity of the Act does not arise at all. There is no demand for interest at the rate of 18 per cent from the date when the contributions became due. Demand is only for 9 per cent till coming into force of the Amendment Act and 18 per cent is demanded only for the period subsequent to the coming into force of the Act. Petitioner's contention is that even then, since the liability arose prior to the Amendment Act, the petitioner is liable to pay interest only at the rate of 9 per cent through out. This contention, I am unable to countenance. Once the interest rate is amended and the petitioner continued to be a defaulter even after the amendment came into force, the petitioner would become liable to pay enhanced rate of interest from the date of commencement of the Amendment Act on the principal amount. That being so, I do not find any merit in the contentions of the petitioner and accordingly, the writ petition is dismissed.

Sd/-
sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.